IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH

R.S.A. No. 4373 of 2004 (O&M)
Date of Decision : 5.11.2007

Punjab State through Collector, Hoshiarpur & Ors.

.....Appellants

Versus

Rajinder Singh

.....Respondent

CORAM : HON'BLE MR. JUSTICE VINOD K. SHARMA

Present : Mr.H.S. Gill, DAG, Punjab
for the appellants.

Mr. Om Pal Sharma, Advocate
for the respondent.

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VINOD K. SHARMA, J. (ORAL)

This regular second appeal has been filed against the judgments and decrees passed by the learned Courts below vide which suit filed by the plaintiff respondent for permanent injunction restraining the defendants from demolishing the tubewell and other construction over the land measuring 2 Kanal 1 Marla bearing Khewat No. 44, 425 , Khatauni No. 473, 452, Khasra Nos. 977 and 971 measuring 22 Kanals 8 Marlas and 2 Kanals 3 Marlas respectively situated in village Chohal, H. B. No. 494, Tehsil and District Hoshiarpur as per jamabandi for the year 1994-95, has been ordered to be decreed.

The plaintiff had brought a suit for permanent injunction on the grounds that he purchased the land as fully detailed in the headnote of the plaint, measuring 22 Kanals 8 Marlas from Hardial Singh son of Naghayia son of Uttam resident of village Chohal vide sale deed dated 30.11.1992 and

another land measuring 2 Kanal 3 Marlas bearing Khasra No. 971 from the Central/Punjab Government vide sale certificate dated 3.2.1994. It was the case of the plaintiff that the land bearing Khasra No.977, as per jamabandi for the year 1946-47, before consolidation was converted into various khasra numbers. All the khasra numbers were under cultivation or under abandi khasra numbers are not pahar, but it is barani and banjar kadim and these khasra numbers were never under forest or under pahar. It was claimed that the notification under Land Preservation Act, 1970 and Forest Conservation Act, 1980 was not applicable to the land in dispute. It was claimed that there was no forest in the land in dispute at all. It was also claimed that as the purchase of the land measuring 2 Kanal 3 Marlas was from the Punjab Government, there was no restriction under the notification, as they applied to the private land and not to State/Central Government's land. It is also the case of the plaintiff that he has not violated the restriction so imposed in village Chohal vide notification dated 25.3.1988. It is also the case of the plaintiff that there was no restriction to raise construction. The aforesaid construction was in existence since 1994. It is also the case of the plaintiff that the defendants should only object to if there was any violation of the Punjab Land Preservation Act. It is also the case of the plaintiff that the restriction imposed vide notification dated 25.3.1988 was not applicable for raising construction over the land which was not under the forest or tress. It is also the case of the plaintiff that there were no tree in the land in which the construction was raised. It is further case of the plaintiff that after issuing notice to restrain the plaintiff from raising further construction an attempt was made to demolish the construction raised by the plaintiff.

On notice, State appeared and filed written statement in which the plea was taken that no notice under Section 80 C.P.C. was served. It is also the case of the defendants that no cause of action accrued to the plaintiff and further that the Civil Court has no jurisdiction to entertain the present suit. On merits, purchase of the land by the plaintiff was admitted. However, it was denied that the application of notification was restricted only to the land of the private owners. It was the case of the defendants that word “Forest” has to be interpreted as understood according to its dictionary meaning. In the judgment of the Hon'ble Supreme Court, the case of the defendants was that the distinction covers all statutory recognized forest whether designated as reserved, protected or otherwise for the purpose of Section 2(1) of Forest Conservation Act. On the basis of the said plea, it was claimed that the suit land along with the adjoining area is hilly area with undulation terrian having number of standing trees and other growth is undoubtedly and explicitly is forest in dictionary. Thus, it was claimed that the suit land is under Forest and Forest Conservation Act, 1980. It was also the case of the defendants that no construction can be raised within the said area and, thus, any construction on the suit land was in violation of notification against Forest Conservation Act, 1980. It is also the case of the defendants that notification dated 25.3.1988 issued by the Punjab Government has to be read with corrigendum issued vide endorsement dated 5.11.1997 which makes notification applicable to the area falling in village Chohal and, thus, area was covered under the Land Preservation Act, 1900 and Forest Conservation Act, 1980.

The learned Courts below on appreciation of evidence have recorded a finding of fact that the land in dispute was under the cultivation prior to coming into force of the notification and further that the construction was raised prior to issuance of corrigendum dated 5.11.1997 and in view of this, the suit filed by the plaintiff respondent was decreed.

An appeal, filed by the State was also dismissed by the learned lower appellate Court by observing that the notification would have perspective effect and, therefore, would not apply to the land under cultivation or under construction prior to issuance of corrigendum.

The learned counsel appearing on behalf of the appellant contends that the notification would have a retrospective effect and, therefore, the suit of the plaintiff should have been dismissed as the construction raised or cultivation undertaken by him was contrary to notification under Land Preservation Act, 1970 and Forest Conservation Act, 1980. In support of this contention the learned counsel for the appellant has placed reliance on the judgment of the Hon'ble Supreme Court in the case of ***State Bank's Staff Union (Madras Circle) Vs. Union of India and others (2005) 7 Supreme Court Cases 584*** to contend that the Hon'ble Supreme Court has been pleased to lay down that merely because rights of some persons such as right to customary bonus were affected by the retrospective effect of the said amendment of the State Bank of India Act, 1955 would not render to be violative of Article 14 of the Constitution of India. The Hon'ble Supreme Court was, therefore, pleased to lay down that it was within the competence of Parliament to make laws and once an Act was inserted with retrospective effect the same could not be declared to be ultra vires. However, this judgment has no application in the present case as

firstly the notification was not issued by state legislation nor the notification can be treated to be having retrospective effect unless the same is made retrospective in exercise of legislative power.

Thus, judgment and decree impugned does not suffers from any illegality or impropriety which may call interference by this Court nor any substantial question of law arises for consideration in this appeal.

Accordingly appeal is dismissed in limine.

5.11.2007 **(VINOD K. SHARMA)**
'sp' **JUDGE**